

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED

00 JUL 14 10 00 AM
U.S. DISTRICT COURT
N.D. OF ALABAMA

NRMA INSURANCE LTD.,

) **ENTERED**

Plaintiff,

) **JUL 14 2000**

vs.

) **CIVIL ACTION NUMBER**

VESTA FIRE INSURANCE
CORPORATION, et al.,

) **99-C-1721-S**

Defendants.

)

**MEMORANDUM OPINION ON KPMG LLP'S MOTION
TO DISMISS THE COMPLAINT**

Defendant KPMG Peat Marwick LLP ("KPMG") has moved to dismiss Plaintiff NRMA Insurance Ltd., ("NRMA")'s Amended Complaint.

This case arises out of a reinsurance agreement between NRMA and Vesta Fire Insurance Corporation ("Vesta"). Based on that agreement, the Court has heretofore ordered that NRMA and Vesta arbitrate their disputes.

During the relevant period, KPMG was Vesta's independent auditors, and it rendered auditors' reports on the annual financial statements of Vesta and its parent company. In its amended complaint, NRMA asserts several causes of action against KPMG: negligence, breach of fiduciary duty, fraud and misrepresentation, fraudulent suppression and concealment, breach of the duty of good faith, conspiracy, and violation of the Racketeer

Influenced Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, (“RICO”). KPMG never had a direct contractual relationship with NRMA.

In passing on the motion to dismiss, this Court assumes the truth of the factual allegations of the amended complaint. *Powell v. Lennon*, 914 F.2d 1459, 1463 (11th Cir. 1990). With that assumption, the Court finds that NRMA’s causes of action against KPMG are sufficiently stated to withstand a Fed.R.Civ.P. (“Rule”) 12(b)(6) motion to dismiss. Whether those causes of action can survive, separately or severally, a summary judgment motion is, of course, a different matter to be considered at a different time - presumably after the completion of discovery.

In the meanwhile, the motion to dismiss will be denied.

DONE this 13th day of July, 2000.

A handwritten signature in cursive script, appearing to read 'U. W. Clemon', is written over a horizontal line.

UNITED STATES DISTRICT JUDGE
U. W. CLEMON